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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,493	06/02/2000	S. T. Lee	D-30207-01	6212

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EXAMINER

BISSETT, MELANIE D

ART UNIT PAPER NUMBER

1711

DATE MAILED: 09/13/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/586,493

Applicant(s)

LEE ET AL.

Examiner

Melanie D. Bissett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-14, 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The rejections based on 35 USC 102 over Lee et al. have been maintained. However, the double patenting rejections have been withdrawn. A new rejection has been made for newly added claim 18.

Terminal Disclaimer

2. The terminal disclaimer filed on 6/5/02 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 6,096,793 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-6, 8-14, and 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al.
5. From a prior Office action:
 5. Lee et al. discloses foamed polyolefin blends comprising LDPE and an ethylene/ α -olefin copolymer, where the copolymer has a density ranging from 0.86 to about 0.94 g/cm³ and a melt index higher than 10 g/10 minutes (col. 2 lines 42-47). Since the term "about 0.94 g/cm³" encompasses values greater than 0.94, the range of Lee's invention anticipates a density greater than 0.94. The reference prefers copolymers having melt indices higher than 20 g/10 minutes (col. 2 lines 57-64). Since present claim 16 recites a melt flow index ranging from "**about** 23 to about 69 g/10 minutes" (emphasis added), it is the

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examiner's position that the reference, teaching melt indices higher than 20 g/10 minutes, anticipates the limitation. Lee teaches preferably mixing 50-90% by weight LDPE with 10-50% by weight ethylene copolymer (col. 3 lines 10-22). Foams are made to exhibit a desired density ranging from 10-150 kg/m³ by extruding a foamable composition including the ethylene polymers and, preferably, physical blowing agents (col. 3 lines 35-53) into a region of reduced temperature and pressure (col. 4 lines 16-22). Additionally, aging modifiers such as fatty acid esters, fatty acid amides, and hydroxyl amides may be included in the composition (col. 3 line 64-col. 4 line 4). Foam sheets have a preferred maximum thickness of about 15 mm (col. 3 lines 23-29).

6. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Hurley et al.

7. Hurley discloses a physically-blown low density polyethylene foam comprising a blend of LDPE and a grafted polyolefin resin (abstract). The grafted resin is preferably a copolymer of ethylene and an alpha-olefin having a density of between about 0.86-0.96 g/cm³ (col. 1 lines 52-60). The foams formed from the invention have densities of 1.0-10 lb/f³ (~16-160 kg/m³). Hurley also cites melt index values for the polyolefins to be about 0.2-about 100 dg/min (col. 3 lines 58-64). Furthermore, the reference suggests adding gas exchange additives including fatty acid esters or fatty acid amides to assist in gas exchange and aging of the foams (col. 8 lines 26-40).

Response to Arguments

8. Regarding the applicant's arguments that Lee does not teach "sufficient specificity to constitute an anticipation under the statute", it is the examiner's position that the reference not only suggests density values above 0.94 by the recitation of "about 0.94" but also suggests an endpoint value (0.94) that would be within

experimental and rounding error of the applicant's claimed density lower limit of 0.941 g/cc. Thus, it is the examiner's position that one skilled in the art would clearly envision the citation of "about 0.94" to encompass the applicant's claimed density value of 0.941 g/cc.

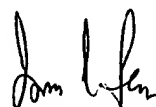
9. Likewise, it is the examiner's position that one skilled in the art would clearly envision a melt index of 23 g/10 min. by Lee's citation of "greater than or equal to about 20 g/10 min." Not only does Lee intend to encompass melt indices greater than 20 g/10 min., but the value of 20 g/10 min. also falls within experimental and rounding error of the applicant's claimed lower limit of 23 g/10 min.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie D. Bissett whose telephone number is (703) 308-6539. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

mdb
September 10, 2002


James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700